MOHAMAD RAMLI ABDUL MANAN A

v.

LIM CHEE WEE

COURT OF APPEAL, PUTRAJAYA B
MOHAMED APANDI ALI JCA
BALIA YUSOF WAHI JCA
AZIAH ALI JCA
[CIVIL APPEAL NO: N-02-778-04-2012]
1 APRIL 2014 C

CIVIL PROCEDURE: *Parties - Striking out - Appeal against decision of Disciplinary Board ('DB') to High Court - Whether respondent correctly cited in originating motion - Whether Bar Council should be cited as respondent - Legal Profession Act 1976, ss. 42, 47, 94(3)(k), 99(3)* D

LEGAL PROFESSION: *Malaysian Bar - Complaint against solicitor - Complaint lodged by president of Malaysian Bar - Appeal against findings of Disciplinary Board ('DB') to High Court - Whether president of Malaysian Bar correctly cited as respondent in originating motion - Whether Bar Council should be cited as respondent - Legal Profession Act 1976, ss. 42, 47, 94(3)(k), 99(3)* E

CIVIL PROCEDURE: *Originating motion - Parties - Whether wrong party named - Whether respondent correctly cited as party - Whether respondent should be struck out as party - Whether Bar Council should be cited as respondent - Legal Profession Act 1976, ss. 42, 47, 94(3)(k), 99(3)* F

Lim Chee Wee ('the respondent'), the President of the Malaysian Bar at the material time, lodged a complaint with the Disciplinary Board ('DB') *via* letter dated 31 March 2011 ('complaint letter') against the appellant for having practised law (i) without a practising certificate; and (ii) without the Professional Indemnity Insurance Coverage. The appellant had also allegedly failed to properly inform the Bar Council of any cessation of practice. The Bar Council ('BC') took the view that the appellant committed a misconduct under s. 94(3)(k) of the Legal Profession Act 1976 ('Act') and requested that an inquiry into the complaints be conducted. Consequent to the complaint, the DB imposed on the appellant a penalty of RM500 payable to the Discipline Fund. Dissatisfied with the decision of the DB, the appellant filed his appeal to the High Court. In its originating motion, the appellant named Tan Sri Dato' Seri Khalid Ahmad Sulaiman, the Chairman G H I

of the DB as the first respondent, and Lim Chee Wee, as the second respondent. Both respondents filed separate applications to be struck out as parties to the appeal. The High Court Judge allowed both applications. However, in respect of the respondent's application *vide* encl. 5, the High Court Judge was of the view that since the respondent was not involved in the disciplinary proceedings, it was inappropriate for him to be named as a party in the appeal. The High Court Judge found that the originating motion which had named the wrong parties was bad in law and struck off the appellant's appeal. Hence, this appeal.

Held (dismissing appeal with costs)
Per Aziah Ali JCA delivering the judgment of the court:

(1) The complaint letter bore the letterhead of the BC and was signed by the respondent in his capacity as the President of the Malaysian Bar. Clearly the complaint against the appellant emanated from the BC. Section 99(3) of the Act allowed the BC or a State Bar Committee to make a complaint of its own motion to the DB against an advocate and solicitor. Since the complainant was the BC, thus the BC was the correct and proper party to be cited as a respondent in this appeal, and not the President of the Malaysian Bar. Pursuant to ss. 42 and 47 of the Act, the only body that may undertake and defend legal action for and against the Malaysian Bar was the Malaysian Bar, represented by the BC (paras 13, 14 & 15)

(2) The High Court Judge had not erred in allowing the respondent's application for him to be struck out as a party to the appeal. Upon both the respondents being struck out as parties, only the appellant remained and there was no respondent. In the circumstances, the appellant's appeal was rendered defective and the High Court Judge was correct in striking out the appellant's appeal. (para 16)

Bahasa Malaysia *Translation Of Headnotes*

Lim Chee Wee ('responden'), Presiden Majlis Peguam Malaysia pada ketika itu, telah membuat aduan kepada Lembaga Tatatertib ('LT') melalui surat bertarikh 31 Mac 2011 ('surat aduan') terhadap perayu kerana telah mengamalkan undang-undang (i) tanpa sijil amalan; dan (ii) tanpa Insurans Tanggung Rugi Badan Peguam Profesional. Perayu juga telah didakwa gagal untuk memaklumkan kepada Majlis Peguam tentang sebarang pemberhentian amalan. Majlis Peguam ('MP') berpendapat bahawa

perayu mungkin telah melakukan salah laku di bawah s. 94(3)(k) Akta Profesion Undang-Undang 1976 ('Akta') dan meminta supaya suatu siasatan mengenai aduan tersebut dijalankan. Berikutan aduan tersebut, LT telah mengenakan denda sebanyak RM500 ke atas perayu yang perlu dibayar kepada Dana Tatatertib. Tidak berpuas hati dengan keputusan LT, perayu telah memfailkan rayuan kepada Mahkamah Tinggi. Dalam usul pemulanya, perayu telah menamakan Tan Sri Dato Seri Ahmad Khalid Sulaiman, Pengerusi LT sebagai responden pertama dan Lim Chee Wee, sebagai responden kedua. Kedua-dua responden telah memfailkan permohonan secara berasingan supaya dibatalkan sebagai pihak kepada rayuan tersebut. Hakim Mahkamah Tinggi telah membenarkan kedua-dua permohonan tersebut. Walau bagaimanapun, berkaitan permohonan responden melalui lamp. 5, Hakim Mahkamah Tinggi berpendapat bahawa, oleh kerana responden tidak terlibat dalam prosiding tatatertib, adalah tidak sesuai untuknya dinamakan sebagai pihak dalam rayuan tersebut. Hakim Mahkamah Tinggi mendapati bahawa usul pemula perayu yang menamakan pihak yang salah adalah tidak sah di bawah undang-undang dan membatalkan rayuan perayu. Oleh itu, rayuan ini.

Diputuskan (menolak rayuan dengan kos)
Oleh Aziah Ali HMR menyampaikan penghakiman mahkamah:

(1) Surat aduan mengandungi kepala surat MP dan ditandatangani oleh responden dalam kapasitinya sebagai Presiden Peguam Malaysia. Jelas sekali, aduan terhadap perayu berpunca daripada MP. Seksyen 99(3) Akta membenarkan MP atau Jawatankuasa Peguam Negeri membuat aduan atas usulnya sendiri kepada LT terhadap seorang peguambela dan peguamcara. Oleh kerana pengadunya adalah LT, maka LT adalah pihak yang betul dan sesuai untuk dinamakan sebagai responden dalam rayuan ini, dan bukanlah Presiden Peguam Malaysia. Menurut ss. 42 dan 47 Akta, satu-satunya badan yang boleh membawa dan mempertahankan tindakan undang-undang bagi pihak dan menentang Badan Peguam Malaysia adalah Badan Peguam Malaysia, diwakili oleh MP.

(2) Hakim Mahkamah Tinggi tidak khilaf apabila membenarkan permohonan responden untuk dibatalkan sebagai pihak kepada rayuan tersebut. Setelah kedua-dua responden dibatalkan sebagai pihak, hanya perayu yang kekal dan tiada responden.

A Dalam keadaan demikian, rayuan perayu akan menjadi cacat dan Hakim Mahkamah Tinggi adalah betul apabila membatalkan rayuan perayu.

Case(s) referred to:

B *Lembaga Tatatertib Peguam-Peguam v. Hoo Lin Coln & Anor [2008] 4 CLJ 317 FC* ***(refd)***

Majlis Peguam v. Poh Fook Yuen & Anor [2012] 6 CLJ 36 CA ***(refd)***

Legislation referred to:

Legal Profession Act 1976, ss. 29, 31(2), 36(1), 42, 47, 54(2), 94(3)(k), 99(3)

C Legal Profession (Professional Liability)(Insurance) Rules 1992, rr. 5, 6

For the appellant - In person

For the respondent - Caroline George (YC Koo with her); M/s Trevor George Partnership

D

[Appeal from High Court, Seremban; Originating Motion No: 25-8-10-2011]

Reported by Sandra Gabriel

E

JUDGMENT

Aziah Ali JCA:

Background facts

F

[1] By a letter dated 31 March 2011 (p. 115 appeal record) the respondent Lim Chee Wee, who was the President of the Malaysian Bar at the material time, lodged a complaint with the Disciplinary Board ("the DB") against the appellant for breach of

G *inter alia* ss. 29, 31(2) and 36(1) of the Legal Profession Act 1976 ("the Act"); the Bar Council's rules on cessation of, or change in, practice, and/or rr. 5 and 6 of the Legal Profession (Professional Liability)(Insurance) Rules 1992 in that the appellant had:

H (a) practised without a practising certificate;

(b) practised without the requisite professional indemnity insurance coverage for the year 2011, from 1 January 2011 to 31 March 2011 and continuing; and/or

I (c) has failed to properly inform the Bar Council of any cessation of practice as required.

[2] The Bar Council ("BC") took the view that the appellant may have committed a misconduct under s. 94(3)(k) of the Act and requested that an inquiry into the complaints be conducted.

[3] Consequent to the complaint, the DB had, by letter dated 12 August 2011, requested the appellant to attend before it on 10 September 2011 to make his representations (p. 120 appeal record). Unfortunately, as can be discerned from the DB's order dated 10 September 2011 (p. 124 appeal record), the appellant did not appear before the DB.

[4] By the said order, the DB imposed on the appellant a penalty of RM500 payable to the discipline fund. Being dissatisfied with the decision of the DB, the appellant filed his appeal to the Seremban High Court *vide* originating motion No. 25-8-10-2011.

Originating Motion No. 25-8-10-2011

[5] In the appeal to the High Court, the appellant named Tan Sri Dato' Seri Khalid Ahmad bin Sulaiman, the Chairman of the DB as the first respondent and the respondent herein, the President of the Malaysian Bar, as the second respondent. Both respondents then filed separate applications to be struck out as parties to the appeal (encls. 5 and 9). The application encl. 5 was filed by the respondent and the application encl. 9 was filed by the Chairman of the DB. The learned judge allowed both applications.

[6] In respect of the respondent's application encl. 5, the learned judge was of the view that since the respondent who was the Chairman of the Malaysian Bar was not involved in the disciplinary proceedings, it was inappropriate to name him as a party in the appeal. The learned judge found that the appellant's originating motion which had named the wrong parties was bad in law. The learned judge then struck off the appellant's appeal.

[7] In respect of the respondent's application, the order of the High Court dated 22 March 2012 reads as follows:

(a) permohonan Responden Kedua (lampiran 5) dibenarkan dan responden Kedua dibatalkan sebagai pihak dalam rayuan ini;

(b) kos permohonan ini sebanyak RM500.00 dibayar oleh Perayu kepada Responden kedua; dan

A (c) selanjutnya rayuan Perayu yang dibawa melalui Usul Pemula bertarikh 18.10.2011 dan Afidavit yang diikrarkan oleh Mohamad Ramli Abdul Manan pada 17.10.2011 terhadap Responden Kedua dibatalkan.

B **[8]** The appellant then filed this appeal against the decision of the learned judge aforementioned.

[9] By the amended notice of appeal dated 28 March 2012 the appellant appeals against the decision of the High Court as follows:

C

a. membenarkan permohonan Lim Chee Wee, President Badan Peguam Malaysia yang terkandung dalam Notis Usul bertarikh 14.11.2011 (Kandungan 5) untuk membatalkan namanya sebagai Responden dengan kos tanpa perintah susulan supaya Majlis Peguam dinamakan sebagai pengganti
D atau mengarahkan Majlis Peguam untuk mencelah; dan

b. membatalkan rayuan perayu terhadap keputusan/perintah Lembaga Tatatertib Peguam-Peguam tanpa mendengar merit rayuan.

E **No Appeal Was Filed In Respect Of The Decision On Encl. 9**

[10] We heard submissions by the appellant who represented himself, and submissions by Ms Caroline George, learned counsel for the respondent. Having considered the appeal record and the
F submissions, we were unanimous that this appeal be dismissed and we so ordered. We awarded costs of RM5,000 to the respondent. The deposit was refunded to the appellant. We now give our reasons below.

G **The Appeal**

[11] Before us the appellant submits that the respondents were named as parties so that they could assist the court in determining and adjudicating the appeal more effectively. It is submitted that there was no necessity for the respondents to apply to be struck
H off as parties because the High Court was obliged to hear his appeal whether or not they were present.

[12] For the respondent, learned counsel submits that the respondent was also, by virtue of s. 54(2) of the Act, the
I Chairman of the BC. The complaint against the appellant was made by the respondent for and on behalf of the BC. Therefore it is submitted that the complainant is the BC and is the proper party to be cited as a respondent.

[13] We have perused the letter of complaint to the DB (p. 115 appeal record) and we find that the letter bears the letterhead of the BC and was signed by the respondent in his capacity as the President of the Malaysian Bar. Clearly the complaint against the appellant emanated from the BC.

[14] Section 99(3) of the Act allows the BC or a State Bar Committee to make a complaint of its own motion to the DB against an advocate and solicitor. In *Lembaga Tatatertib Peguam-Peguam v. Hoo Lin Coln & Anor* [2008] 4 CLJ 317; [2008] 1 LNS 194, Augustine Paul FCJ said *inter alia* as follows:

> It is therefore clear that it is the Bar Council that has been entrusted with the duty of maintaining the standard and conduct of advocates and solicitors and not the DB. It acts on its own motion in cases involving misconduct under s. 94 of the LPA. In other cases warranting disciplinary action the DB acts on complaints made to it by, *inter alia*, the Bar Council. It is thus beyond doubt that the Malaysian Bar is the guardian of professional conduct and etiquette of advocates and solicitors. In the present case that was precisely what had been done when the BC, through the respondent, lodged the complaint against the appellant.

[15] Based on the fact that the complainant was the BC (see p. 124 appeal record), we agree with learned counsel for the respondent that the BC is the correct and proper party to be cited as a respondent in this appeal, and not the President of the Malaysian Bar. Further pursuant to ss. 42 and 47 of the Act, the only body that may undertake and defend legal action for and against the Malaysian Bar is the Malaysian Bar, represented by the BC (*Majlis Peguam v. Poh Fook Yuen & Anor* [2012] 6 CLJ 36).

[16] We therefore find that the learned judge has not erred in allowing the respondent's application for him to be struck out as a party to the appeal. Upon both respondents being struck out as parties, only the appellant remained. There was no respondent to speak of. The appellant's appeal was thus rendered defective. In the circumstances, we find that the learned judge was correct in striking out his appeal.